

9. Imbalance of programme and censorious attitude to complainant by Mr. T. Bickerstaff."

In further correspondence with the Tribunal, Mr Cullimore identified four matters which he wished the Tribunal to deal with:

1. The failure of Radio Pacific Ltd. to tender the recommended apologies.

2. That written apologies are inadequate. Apologies should be given publicly over the sports programme by Mr Bickerstaff.

3. That the Tribunal find in his favour in respect of the matters in which he failed before the Committee of Private Broadcasters, namely—

- (a) The illegal nature of the programme.
- (b) The poor standard of objective journalism which was shown in the broadcasts dated 19 March 1980.
- (c) The disregard for the enticement of listeners onto an illegal promotion . . ."

4. The advertising of an illegal enterprise over a children's programme on Sunday 17 February.

A hearing was held to enable Mr Cullimore to put his views to the Tribunal and at the hearing he confirmed that the above matters were those which were outstanding and which concerned him.

The hearing was attended by Mr Michael D. Jack, who had been appointed station manager for Radio Pacific. It was clear that Mr Jack was not in possession of the background and history of the matter. The Tribunal decided to give Radio Pacific seven days after the hearing to make further submissions to the Tribunal and to forward a copy of them to Mr Cullimore who would then be given an opportunity of responding to the Tribunal.

Radio Pacific took the view that two of the decisions of the Committee of Private Broadcasters were highly questionable. They said Mr Cullimore was given a fair opportunity to state his case on Mr Bickerstaff's programme and in fact did so when he called the first time. However he then called on two other occasions to make exactly the same point. It was on the third occasion that Mr Bickerstaff referred to him as "a bloody bore".

Radio Pacific did not consider that the rules could be interpreted as being a licence for unrestricted access by all and sundry to discuss whatever takes their fancy and particularly to make the same point over and over again.

The Tribunal was told that the Committee of Private Broadcasters' decision had been received at the station but had inadvertently been filed without having been seen by either the managing director, Mr Dryden, or the station manager, Mr Jack. Steps were being taken to see that that did not happen again.

The letter written to Mr Cullimore falls far short of that which was contemplated by the Committee of Private Broadcasters. The letter had the effect of reviewing the Committee of Private Broadcasters' decision rather than tendering apologies.

The Radio Pacific's letter said this—

"Although the use of the terminology may be questionable, I am unable to determine with any accuracy exactly in what context the phrase was used. However, at the time the statement was made, you were not identified by name, and had some rectification been attempted by Radio Pacific on air, then this could well have compounded the alleged injustice. Although Radio Pacific can obviously not apologise for the personal opinions of Mr Bickerstaff, we do express our regret at Radio Pacific being the means of conveying that opinion."

The Tribunal does not consider that that constitutes an adequate apology. It must be acknowledged that the station was not required by the Committee to apologise because Mr Bickerstaff's language breached Rule 1.1 (b), for that complaint was not upheld. It did find that Mr Cullimore was not treated justly and fairly. The apology was to be tendered to him for the way Mr Bickerstaff appeared to have behaved towards him on the air.

The station must assume responsibility for the conduct of the hosts of programmes. Radio Pacific Ltd. is the warrant holder. It has the obligation and legal responsibility for what is broadcast by the station. It can therefore apologise for the actions of Mr Bickerstaff and it should have done so.

Mr Bickerstaff's style may well be described as abrasive. But the remark he made about Mr Cullimore was calculated to be insulting rather than to be a comment on Mr Cullimore as programme material. The station, having encouraged Mr Bickerstaff's programme style, must take responsibility for breaches of rules which follow. It was clear Mr Bickerstaff had developed an animus against Mr Cullimore and

took advantage of his own position as host to cut him off.

As to the "imbalance", the Committee upheld Mr Cullimore but the station did not accept the decision. Mr Jack in his letter of apology on behalf of Radio Pacific said, "Accordingly, it is equally difficult for me to objectively determine at this stage whether we gave you a 'fair go'. If in fact, we didn't, then the station regrets that this occurred." That is not an apology. The Committee upheld Mr Cullimore. The station has apparently not accepted that decision. The Tribunal has found no reason to interfere with the finding of the Committee. Mr Cullimore deserved an apology.

With regard to the use of Mr Cullimore's name on the air by Mr Tucker, Radio Pacific wrote: "This should not have occurred, although in fairness to Mr Tucker, it was not done with malicious intent. Mr Tucker was at that stage, relatively inexperienced in talk-back radio. Radio Pacific, however, unreservedly apologises for this occurrence and for any embarrassment it may have caused."

The Tribunal does not see those statements as an unreserved apology; there was an attempt to excuse itself. Mr Cullimore was entitled to an unreserved apology.

The station raised a point which had already been dealt with by the Committee. So clearly the station did not accept the finding of the Committee in this respect. It can therefore hardly proffer unreserved apologies and maintain its position in the same letter.

The Tribunal observes that the use of inexperienced people is not in itself an excuse for a warrant holder to condone breaches of radio standards and rules. Care should be taken by the station to exercise sufficient editorial control *at all times* to ensure that such lapses do not occur. When they do occur the station should unreservedly accept its responsibility.

The Committee of Private Broadcasters constitutes an important element of self-regulation in the Broadcasting Act. Put in a similar position to that of the Board of the Broadcasting Corporation dealing with complaints about Radio New Zealand stations, the Committee of Private Broadcasters consists of two persons nominated by private broadcasting stations with an independent chairman.

While a station may wish to reserve its position when a complaint is referred to the Tribunal and to debate and argue its case there, when a finding has been made against the station by the Committee of Private Broadcasters the station should be prepared to carry out the recommendations of that body in the spirit required.

While we were told that due to a clerical error action was not taken initially, when a letter of apology was sent it proved to be quite unsatisfactory.

We strongly endorse the view of the Committee of Private Broadcasters that this matter should have been dealt with differently from the start. In particular, Mr Dryden could have replied without sarcasm to Mr Cullimore. Since there was substance in Mr Cullimore's complaint, the treatment he received was unfortunate.

We do not consider there is anything in his complaint about the use of the word report instead of the word investigation in relation to the Internal Affairs Department. Both words were used in the Minister's letter and the Committee of Private Broadcasters rightly rejected that complaint. There was no breach of the standard of objective journalism.

The Tribunal does not uphold the complaint by Mr Cullimore in relation to the illegality of the programme. The Tribunal is not in a position to determine the question of the legality of the promotion. Unlike Mr Cullimore it does not see an opinion of the Internal Affairs Department as a final legal ruling on the topic (nor did the Minister in his letter). Furthermore the station dropped the promotion before the view of the Department of Internal Affairs was made known. The station may well, as a result of this experience, consider obtaining the department's or other advice before embarking on such promotions.

The Tribunal wishes to add one observation. A station may, on quite reasonable grounds, find that a complaint has become a nuisance. It is quite possible that because of his persistence, his prolific correspondence and his repetitive telephone calls Mr Cullimore had become a nuisance (in a programme and administrative sense) to Radio Pacific Ltd. However, if complaints are dealt with properly and courteously in the first instance, the complaint is less likely to be a cause of annoyance to the station. Mr Cullimore is entitled to have his complaints properly dealt with and, as it will be seen from this decision, there was substance in them. He might assist by keeping his correspondence concise and to the point, however.

By nature of the types of programmes it conducts Radio Pacific is likely to attract complaints and complainants. Even if complaints are made of a frivolous or vexatious nature they have to be dealt with by the station, but the Tribunal will in appropriate cases which come to it identify publicly